



## Texas Department of Health

### Investigation of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons

Texas Administrative Code, Title 25 - Health Services, Part I - Texas Department of Health, Chapter 1. Texas Board of Health, Subchapter Q. - Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons  
(<http://www.sos.state.tx.us/tac/25/I/1/Q/index.html>)

Amended by the Board of Health May 21, 1999, and became affective and applicable to youth camps on June 13, 1999.

**Authority:** The provisions of this Subchapter Q issued under the Health and Safety Code, §§ 12.001; the Human Resources Code, §§ 48.083 and the Family Code, §§ 261.401.

Also, see the following which required the adoption of these rules: Texas State Statutes, Family Code, Subtitle E. - Protection of the Child, Chapter 261 - Investigation of Report of Child Abuse or Neglect, Subchapter A - General Provisions  
(<http://capitol.tlc.state.tx.us/statutes/codes/FA000070.html>)

Title 25. TEXAS ADMINISTRATIVE CODE

Chapter 1. Board of health

Subchapter Q. (Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons)

§1.201. Purpose.

The purpose of these sections is to:

(1) define abuse or neglect of a child and describe procedures for reporting and investigating in accordance with the Family Code, Chapter 261; and

(2) define abuse, neglect or exploitation of an elderly or disabled person and describe procedures for reporting and investigating in accordance with the Human Resources Code, Chapter 48.

§1.202. Application.

The provisions of this undesignated head shall apply to the Texas Department of Health's investigation of abuse or neglect of a child or abuse, neglect or exploitation of an elderly or disabled person which occurs in any facility licensed, certified, registered, or operated by the Texas Department of Health.

§1.203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agent--An individual not employed by a facility but working under the auspices of the facility, such as a volunteer, student, or consultant.

(2) Allegation--A report by a person believing or having knowledge that a child has been or may be abused or neglected in a facility or that an elderly or disabled person has been or may be abused, neglected or exploited in a facility.

(3) Caretaker--An owner, operator, manager, employee, or agent of a facility in which a patient or client is located.

(4) Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(5) Client--A child, disabled person or elderly person receiving services in a facility.

(6) Clinical issues--Issues relating to unsafe practice by a licensed health care professional or a violation of a state law or rule relating to the licensure or practice of a licensed health care professional.

(7) Confirmed--A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

(8) Department--The Texas Department of Health.

(9) Disabled person--A person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is either 18 years of age or older or who is under 18 years of age and has the disabilities of minority removed.

(10) Elderly person--A person 65 years of age or older.

(11) Facility--A facility providing health care services which is operated, licensed, certified, or registered by the department. Such facilities include licensed general or special hospitals, licensed private psychiatric hospitals, licensed special care facilities, licensed abortion facilities, licensed ambulatory surgical centers, licensed birthing centers, licensed end stage renal disease facilities, the two hospitals operated by the department, youth camps and public health clinics operated by the department. This term includes any owner, operator, manager, employee, or agent of a facility.

(12) Guardian--Anyone named as "guardian of the person" of a child, elderly person, or disabled person by a probate court order.

(13) Inconclusive--A finding that an allegation of abuse, neglect, or exploitation leads to no conclusion or definite result due to a lack of witnesses or other relevant evidence.

(14) Nonserious physical injury--Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include superficial laceration, contusion, or abrasion.

(15) Observable and material impairment--Discernable and substantial damage or deterioration.

(16) Patient--A child, disabled person, or elderly person receiving health care services in a facility.

(17) Perpetrator--The person who has committed an act of abuse or neglect of a child or abuse, neglect, or exploitation of an elderly or disabled person.

(18) Perpetrator unknown--The term used to describe an incidence in which abuse, neglect, or exploitation is confirmed but positive identification of the responsible person can not be made and in which self injury has been eliminated as the cause.

(19) Preponderance of evidence--The greater weight of evidence or evidence which is more credible and convincing to the mind.

(20) Reporter--The person filing a report of abuse, neglect, or exploitation, either the:

(A) victim of alleged abuse, neglect, or exploitation;

(B) a third party filing a report on behalf of the alleged victim; or

(C) both.

(21) Serious physical injury--An injury determined to be serious by the examining physician. Examples of serious injury may include fracture; dislocation of any joint; internal injury; any contusion larger than two and one-half inches in diameter; concussion; second or third degree burns; first degree scald burns greater than the percentage of the body involved or involving hands,

feet, face or genitals; or multiple lacerations, contusions or abrasions.

(22) Sexual abuse--Any sexual activity, including any involuntary or nonconsensual sexual conduct that would constitute an offense under the Penal Code, §21.08 (indecent exposure) or Chapter 22 (assaulting offenses), involving a facility and a patient or client. Sexual activity includes but is not limited to kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; and request, suggestion or encouragement for the performance of sex.

(23) Substantial harm--Real and significant physical injury or damage to a child that includes, but is not limited to, bruises, cuts, welts, skull or other bone fractures, brain damage, subdural hematoma, internal injuries, burns, scalds, wounds, poisoning, human bites, concussions, and dislocations and sprains.

(24) Substantial risk--Real and significant possibility or likelihood.

(25) Unconfirmed--A finding that an allegation of abuse, neglect or exploitation is not supported by the preponderance of the evidence.

(26) Unfounded--A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

#### §1.204. Abuse, Neglect, and Exploitation Defined.

(a) Abuse defined.

(1) Abuse of a child includes the following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident (an unforeseen event that causes or threatens physical injury despite prudent efforts to avoid the risk of injury) or reasonable discipline (correction of behavior that does not result in or risk substantial harm from physical injury) by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action (effort that an ordinary and prudent person would take to stop an action from occurring) by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Penal Code, §43.01 (This is met whether the child actually engages in sexual conduct or simply faces a substantial risk of doing so);

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic (this is met whether or not the child voluntarily participates);

(I) the current use by a person of a controlled substance as defined by the Health and Safety Code, Chapter 481, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child; or

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by the Health and Safety Code, Chapter 481.

(2) Abuse of an elderly or disabled person means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse by the persons, caretaker, family member, or other individual who has an ongoing relationship with the person.

(3) Abuse does not include:

(A) the proper use of restraints or seclusion in accordance with federal or state laws or regulations or court order;

(B) other actions taken in accordance with federal or state laws or regulations or court order;

(C) actions an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, patients or clients, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion; or

(D) complaints related to the daily administrative operations of a facility (e.g., staffing ratios).

(b) Neglect defined.

(1) Neglect of a child includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) the following acts or omissions by any person:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for the child, with the failure

resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child (if the failure results in an observable and material impairment to the child's growth, development or functioning or in a substantial risk of such an observable or material impairment), excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(2) Neglect of an elderly or disabled person means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

(c) Exploitation defined. Exploitation of an elderly or disabled person means the illegal or improper act or process of a caretaker, family member or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

#### §1.205. Reports and Investigations.

(a) The Texas Department of Health (department) shall investigate allegations received relating to the abuse or neglect of a child or the abuse, neglect, or exploitation of an elderly or disabled person in a facility.

(b) The department will only investigate reports when:

(1) the act is reported to have occurred in a facility and the victim was a patient or client of the facility;

(2) the act occurred away from the facility but the facility was responsible for the supervision of the patient or client who was the victim at the time the act allegedly occurred;

(3) the act is reported to have occurred in a facility and the alleged perpetrator was an owner, operator, manager, employee, or agent of the facility; or

(4) the act occurred away from the facility but the facility was responsible for the supervision of the alleged perpetrator at the time the act occurred.

(c) The department shall review each allegation and determine that it is appropriate for the department to investigate the allegation.

(1) If there is reason to suspect that the patient or client was abused, neglected, or exploited prior to admission to the facility or during an unsupervised absence from the facility, the department shall refer the allegation to the Texas Department of Protective and Regulatory Services.

(2) If the allegation involves the actions of a licensed health care professional, the department will determine whether the allegation involves clinical issues.

(A) The department will pursue an investigation of the portion of an allegation which does not involve clinical issues.

(B) If the allegation involves clinical issues, the allegation shall immediately be forwarded to the state agency which licenses the health care professional involved. The identity of a person reporting abuse or neglect must be blacked out or deidentified.

(3) The department need not investigate an allegation that clearly does not involve abuse or neglect of a child in a facility or abuse, neglect or exploitation of an elderly or disabled person in a facility. The department may refer the reporter to other agencies for assistance.

(4) Injuries of unknown origin shall be investigated if the attending physician, after examining the patient, suspects that the injury is the result of abuse or neglect.

(5) If an allegation involves the daily administrative operations of a facility and has not resulted in a specific case of abuse, neglect, or exploitation, such as the failure to maintain an adequate number of staff, the department need not investigate the matter under this section but may investigate the matter as a complaint investigation involving regulatory issues.

(d) Allegations which cannot be investigated by the department pursuant to the Family Code, Chapter 261, or the Human Resources Code, Chapter 48, shall be referred to the Texas Department of Protective and Regulatory Services for appropriate investigation or action consistent with existing law.

(e) The department shall make a thorough investigation promptly after receiving an allegation.

(1) The primary purpose shall be the protection of the child or elderly or disabled person.

(2) If a facility is licensed by the department and another state agency, the department shall notify the other agency (if the other agency is unaware of the allegation) before initiating an investigation and make a reasonable effort to coordinate the investigation and avoid duplication of effort.

(3) If a report of serious physical injury or sexual abuse of a child is received by the department from the Texas Department of Protective and Regulatory Services, the investigation shall be conducted jointly by the appropriate local law enforcement agency and the department, if possible. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation.

(f) Anonymous allegations will be received and investigated following the same procedures that are used when the reporter is known.

(g) An allegation relating to a patient or client who is in the facility where the act allegedly occurred at the time of the department's receipt of the allegation shall be given priority by the department in the scheduling of investigations. An allegation relating to a patient or client who is no longer in the facility shall be given secondary priority.

(h) An investigation of abuse, neglect, or exploitation may occur in conjunction with other survey activities or complaint investigations relating to violations of federal or state laws or rules; however, the determination as to whether abuse, neglect, or exploitation has occurred or is likely to occur is a separate determination

from regulatory matters and shall be made without regard as to whether law or rule violations or deficiencies are cited.

(i) An investigation shall include:

(1) an interview with the alleged victim, if appropriate. An interview with a child alleged to be a victim of physical abuse or sexual abuse shall be audiotaped or videotaped unless the department determines that good cause exists for not audiotaping or videotaping the interview. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this paragraph shall be construed as prohibiting the department from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this paragraph. The fact that the department failed to audiotape or videotape an interview is admissible at the trial of the offense that is the subject of the interview;

(2) an interview with the alleged perpetrator unless the investigator has already determined that there was no abuse, neglect, or exploitation or the risk of the same does not exist; and

(3) consultation with persons thought to have knowledge of the circumstances.

(j) An investigation shall address the issues set forth in the:

(1) Human Resources Code, §48.038(a), concerning elderly or disabled persons; or

(2) Family Code, §261.401, concerning children.

(k) If during the course of the investigation it becomes apparent that the allegation is frivolous or patently without factual basis, the investigation may be closed as unfounded with supervisory approval. The reason for this determination, based on specific evidence, will be included in the report.

(l) If there is not a preponderance of the evidence to indicate that an allegation should or should not be confirmed, due to lack of witnesses or other available evidence, a finding of inconclusive may be used with supervisory approval.

(m) If during the course of the investigation it becomes apparent that abuse, neglect or exploitation has not occurred or is not likely to occur, the investigation may be closed as unfounded with supervisory approval.

(n) An investigative report shall indicate "perpetrator unknown" in those incidences where the preponderance of evidence exists to confirm abuse, neglect, or exploitation but positive identification of the person responsible cannot be determined and self injury has been eliminated as the cause. Evidence must exist that abuse, neglect, or exploitation has been committed for the term "perpetrator unknown" to be used.

(o) The department shall make a reasonable effort to notify each parent and legal guardian, if one has been appointed, of the nature of the allegation, that the interview or examination was conducted, and of the disposition of the investigation.

(1) When during an investigation of a report of suspected child abuse or neglect a representative of the department conducts an interview with or an examination of a child, the department shall make a reasonable effort before 24 hours after the time of the interview or examination to notify each parent of the child and the child's legal guardian of the nature of the allegation and of the fact that the interview or examination was conducted.

(2) If a report of suspected child abuse or neglect is administratively closed by the department as a result of a preliminary investigation that did not include an interview or examination of the child, the department shall make a reasonable effort



before the expiration of 24 hours after the time the investigation is closed to notify each parent and legal guardian of the disposition of the investigation.

(3) The notice required by paragraphs (1) and (2) of this subsection is not required if the department determines that the notice is likely to endanger the safety of the child who is the subject of the report, the person who made the report, or any other person who participates in the investigation of the report.

(4) The notice required by paragraphs (1) and (2) of this subsection may be delayed at the request of a law enforcement agency if notification during the required time would interfere with an ongoing criminal investigation.

#### §1.206. Completion of Investigation.

(a) After receiving an allegation which the Texas Department of Health (department) determines is appropriate for investigation, the department's investigator shall finish an investigation within:

(1) 14 days if the child or elderly or disabled person is in the facility at the time the department receives the allegation;

(2) 60 days for all other allegations; or

(3) the time period set by an extension granted to the investigator by his or her supervisor.

(b) Following the investigation, the investigator shall submit an investigative report, including:

(1) a statement of the allegations;

(2) a summary of the investigation;

(3) an analysis of the evidence;

(4) the investigator's determination as to whether or not abuse, neglect, or exploitation occurred;

(5) designation of the perpetrator, if possible;

(6) a determination as to how the incident should be classified in accordance with §1.204 of this title (relating to Abuse, Neglect, and Exploitation Defined); and

(7) recommendations resulting from the investigation.

(c) An investigation is not considered complete until review of the investigative report is completed by all appropriate department personnel.

(d) If the department determines that the child or elderly or disabled person should be removed from the facility in order to protect the child or person from further abuse, neglect, or exploitation, the department shall inform the Texas Department of Protective and Regulatory Services within 24 hours of the determination.

(e) If the investigation confirms abuse, neglect, or exploitation, the written report of the completed investigation by the department, along with the department's recommendations and related documents, shall be submitted to:

(1) the appropriate district or county attorney or law enforcement agency if the report concerns abuse or neglect of a child;

(2) the Texas Department of Protective and Regulatory Services if protective services are necessary;

(3) the appropriate probate court if a guardian has been appointed for an elderly or disabled person; and

(4) the appropriate state or local law enforcement agency if the report concerns abuse of an elderly or disabled person which could constitute a criminal offense under any law, including the Penal Code, §22.04.

(f) In cases of abuse, neglect, or exploitation by a licensed, certified, or registered health care professional, the department may forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients or clients of the facility must be blacked out or deidentified.

(g) The department shall notify the reporter, if known, in writing of the outcome of the complete investigation.

(h) The department shall notify the alleged victim, and his or her parent or guardian if a minor, in writing of the outcome of the completed investigation.

(i) If the department receives a complaint about a department investigation of abuse, neglect, or exploitation in a facility, the department shall refer the complaint to the appropriate associate commissioner or office which oversees the investigations in that particular facility.

#### §1.207. Confidentiality of Investigative Process and Report.

(a) The allegation and the reports, records, communications and working papers used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation, are confidential and may be disclosed only as provided in the Family Code, §261.201, or the Human Resources Code, §48.101 and §48.038(f) and (g), and pursuant to the sections under this undesignated head.

(b) Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations.

(c) The completed investigative report and related documents may be released to governmental agencies as described in this undesignated head.

(d) The completed investigative report and related documents may be released by court order.

(e) The completed investigative report and related documents may be released to the victim or the victim's parent or guardian if the victim is a minor if there is no ongoing criminal investigation. Any information which might reveal the identity of the reporter, any other patients or clients of the facility or any other person whose life or safety might be endangered by the disclosure must be blacked out or deidentified.

(f) The investigative report and related documents shall not be available to the public.

(g) The completed investigative report and related documents shall be released to the adoptive parents or prospective adoptive parents of a child who was the subject of an investigation or an adult who was the subject of an investigation as a child. Any

information which might reveal the identity of the reporter, the biological parents or any other person whose identity is confidential shall be blacked out or deidentified.

(h) The completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person shall be released to the subject of a report of abuse, neglect, or exploitation or to that person's legal representative upon request. Any information relating to the reporter's identity or any other individual whose safety or welfare may be endangered by the disclosure shall be blacked out or deidentified.

(i) At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request the department to remove information about the person's alleged role in the abuse or neglect report from the department's records.

(j) On request under subsection (i) of this section by a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department's records concerning the person's alleged role in the abuse or neglect report.